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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/224,262	12/31/1998	KENNETH LAWRENCE ACCARDI	15-SV-4834	3931

7590

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EXAMINER
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CHEN, TE Y

ART UNIT	PAPER NUMBER
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2171

16

DATE MAILED: 05/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PRG

# Office Action Summary

Application No.  
09/224,262

Applicant(s)  
Kenneth et al.

Examiner  
T. Chen

Art Unit  
2171



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 25, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

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## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on 10/03/2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/224,262 is acceptable and a CPA has been established. An action on the CPA follows.
2. Claims 1-28 remain for examination, claims 1, 8, 16, 23 have been amended.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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3. Claims 1-28 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of copending Application No. 09/199,506. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed medical diagnostic systems comprise substantially the same apparatus and perform the same type of functions, wherein the system comprising: (1) a plurality of medical diagnostic units which including a field service unit were connected to a remote automated medical service facility via a network link; (2) the field service unit is configured to compose service requests based upon predefined service modules of functions; (3) the service request which includes identification of a diagnostic system or facility of interest is communicated to the automated service facility which verifies the request and executes the requested function; 4) medical data gathered from the diagnostic system and service databases; 5) results of the service operation are transmitted back to the requesting unit.
4. Although the claimed grouping or language are different, the essential subject matters and functions of the claimed two systems are the same, thus by using different wording or claim sequencing does not served as a basis for patentability.
5. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

7. Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Derzay et al. (U.S. Patent No. 6,434,572).

8. As to claim 1, Derzay et al. taught the invention substantially as claimed, including:

a) a medical diagnostic station [for example, 12, Fig. 1] configured to store medical image data [88, Fig. 1; col. 1, line 40 - col. 2, line 8];

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b) a field service unit [for example, 24, Fig. 1] configured to generate service requests for operational servicing of the medical diagnostic station, identifying a standard service from a plurality of service functions and a unique identifier for the medical diagnostic station [col. 4, lines 58-61; Fig(s). 6-11, col. 12, lines 25-65];

c) a service facility [ for example, 22, Fig. 1] coupled to the medical diagnostic station and to the field service unit via network links [for example, 80, Fig. 1] for receiving the service requests from the field service unit and transmitting requested data to the field service unit [Abstract; lines 3-7; col. 4, lines 47-61].

9. As to claims 2 and 7, Derzay et al. further disclosed the system comprising a plurality of medical diagnostic stations of different modalities [col. 1, lines 25-38; for example, see 14, 16, 18, Fig. 1], and wherein the standard service functions of service requests include modality-specific functions [col. 8, line 55- col. 9, line 4, 118, 120, 122, Fig. 3].

10. As to claim 3, Derzay et al. further disclosed the field service unit of the system is configured to transmit the service request via an electronic message to the service facility [for example, see Fig(s). 6, 10, etc.], and the service facility is configured to transmit the data to the field service unit via an electronic response message [col. 12, lines 25-32; for example, see Fig. 9].

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11. As to claim 4, Derzay et al. further disclosed the service facility is configured to verify consistence between components of the service requests received from the field service unit prior to accessing the data from the medical diagnostic system [254, Fig. 12; 284, 288, Fig. 13; col. 16, lines 24-34; col. 17, line 55 - col. 18, line 2].
12. As to claim 5, Derzay et al. further disclosed the system including at least one database for storing historical service data for the diagnostic station [102, Fig. 2], and the service facility is configured to access the historical service data for response the service request from the field service unit [for example, see Service History button, Fig. 9].
13. As to claim 6, Derzay et al. further disclosed the service facility is configured to receive the service request, access the data from the diagnostic system and transmit the data to the field service unit automatically and without operator intervention [col. 3, lines 27-37; Fig. 13; col. 18, lines 39-42].
14. As to claims 8-15, these claims repeat either the same limitations of claims 1-7 or well known features in the medical diagnostic system. As the method and architecture of these claims has been shown to be taught or fairly suggested by Derzay et al. As such, these claims are rejected for the same reasons given above.

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15. As to claims 16-28 the steps in the claimed method are deemed to be made inherit by the functions of the apparatus structure in the combination discussed above, hence were rejected for the same reasons.

*Response to Arguments*

16. Applicant's arguments filed on 02/25/2003 have been fully considered, but they provides little base and explanations of any subject matter which distinguish the features claimed in the instant application from the prior art on record.

17. Regarding Applicant's arguments with respect to the 102 rejections, the examiner disagrees with applicant's assertion that Derzay's reference discloses an open-ended medical service requests system, which does not use a plurality of predefined standard service functions listed in a menu of a graphic user interface, which is interactively used by a user from a field service unit to a service center as claimed by applicant. The examiner disagrees with applicant's argument, because Derzay does in fact disclose the claimed features.

18. Specifically, applicant's attention is directed to member 206, Fig. 8 of the Derzay's reference. There, Derzay clearly discloses a plurality of predefined function area listed in a Web page menu [202, Fig. 8], to be selected by a field service user when he inputs a service request. The user can transmit his request with the selected function area information to the medical



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service center by pushing the button 216. Furthermore, Derzay discloses that his system provides other predefined function utilities, for example the service History Reporting (220), System Usage (224), Tube Usage, System activity Monitoring (226), as listed in the Web page menu of 218, Fig.9 [see col. 14, lines 50-63], or those predefined medical software service image protocols as shown by Fig. 11 via the Web page menu 236.

19. The examiner also notes, applicant has taken a piece-meal analysis of the reference. Specifically, Derzay actually teaches both an open-ended system service request, as well as a set of predefined functions being formatted in a page menu. Hence, it meets the claimed limitations as noted above. The examiner interprets the predefined functions to be those illustrated as in 206, Fig. 8.

20. Thus, base on the above discussion, the examiner contends that Derzay's disclosure reads on the features as claimed by applicant.

### *Conclusion*

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. / Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Chen whose telephone number is (703) 308-1155. The examiner can normally be reached Monday through Friday from 7:30 A.M. to 4:30 P.M.
23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic, can be reached at (703) 308-1436. The fax phone numbers for this group are:
  - (703) 746-7238 (After Final Communication);
  - (703) 746-7239 (Official Communications); and
  - (703) 746-7240 (For Status Inquiries, Draft Communication).
24. Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

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Susan Chen

April 24, 2003

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SAFET METJAHIC  
SUPERVISORY PATENT EXAMINER  
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